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March 8, 1999

RECEIVED
MAR 8 1999
FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Ms. Magalie Roman Salas, Secretary
Federal Communications Commission
Office of the Secretary
445 Twelfth Street, SW, Room TB-204
Washington, DC 20554

Re: RM 9474 – Allegiance Telecom, Inc. Petition for Rulemaking

Dear Ms. Salas:

Telergy Network Services, Inc. and Telergy Central LLC (collectively "Telergy"), through counsel, hereby submits this letter in support of Allegiance Telecom Inc.'s ("Allegiance") Petition for Rulemaking regarding the establishment of procedures to detect and deter Bell Operating Company ("BOC") backsliding on section 271-related obligations once interLATA authority is obtained.

Telergy, through its telephone operating subsidiaries, is constructing fiber optic networks throughout New York State. Telergy has completed construction of a 350-mile fiber backbone in Niagara Mohawk Power Corporation's right-of-way from Buffalo to Albany, and is in the process of installing spurs and interconnected backbones throughout New York State, as well as the Northeastern region of the United States. Telergy continues to commit significant resources to the development of its facilities-based network in order to provide advanced telecommunications services to its customers.

The success of Telergy's provision of advanced telecommunications services is dependent, in part, on Telergy's ability to interconnect with Bell Atlantic's network for purposes of exchanging traffic and accessing unbundled network elements. In Telergy's view, the advances in local competition made to date have come only by virtue of the BOCs' desire to obtain interLATA relief, and moreover, Telergy agrees with Allegiance's statement that "BOCs

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have demonstrated time and again ... that they will rarely do more than the rock-bottom minimum to implement the market-opening provisions of the Act.”¹ Once BOCs are permitted to provide interLATA service, their incentive to comply with the market-opening provisions of the Communications Act could diminish rapidly, as Allegiance suggests.² Thus, Telergy submits that it is critical that the Commission institute a formal rulemaking proceeding to develop and implement a national framework to detect and deter backsliding.

In its past section 271 decisions, this Commission has noted that, to demonstrate compliance with the 271 Competitive Checklist, a BOC must show that “it has a concrete and specific obligation to furnish ... each checklist item ... in the quantities that competitors may reasonably demand and at an acceptable level of quality.”³ Telergy supports this standard, and agrees with Allegiance that enforcing this standard requires that the Commission develop a comprehensive framework to ensure that a BOC is providing and continues to provide the items enumerated in the Competitive Checklist. At a minimum, Telergy believes that enforcing this standard requires that the Commission:

1. Endorse verifiable national minimum performance standards to ensure that each BOC “is providing” and continues to provide each Competitive Checklist element;
2. Establish an expedited section 271 complaint procedure; and
3. Establish remedies to deter and counter BOC backsliding on section 271-related obligations.

By taking these steps – each of which is outlined in detail in the Allegiance Petition – the Commission will go a long way toward establishing workable procedures to ensure BOC compliance with the procompetitive provisions of the Communications Act.

At bottom, Telergy agrees with Allegiance’s view that “once BOCs are permitted to provide in-region interLATA service, they will have little incentive to keep the plethora of promises made to achieve 271 relief, despite the fact that section 271 creates continuing obligations.”⁴ To prevent BOC backsliding once 271 relief is obtained, Telergy respectfully

¹ Allegiance Petition at 4.

² *Id.*


³ *Application of BellSouth Corporation, BellSouth Telecommunications, Inc., and BellSouth Long Distance, Inc. for Provision of In-Region, InterLATA Services in Louisiana*, Memorandum Opinion and Order, CC Docket No. 97-137, 13 FCC Rcd 20599 at ¶ 78 (1998).

⁴ Allegiance Petition at 4.

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submits that the Commission should develop backsliding countermeasures through a rulemaking proceeding, consistent with the Allegiance Petition, prior to BOC entry into in-region interLATA markets.

Respectfully submitted,



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